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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/795,843

03/08/2004

Dilip K. Nakhasi

0803-0111

1274

26568

7590

03/24/2010

COOK ALEX LTD

SUITE 2850

200 WEST ADAMS STREET

CHICAGO, IL 60606

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/24/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/795,843	<b>Applicant(s)</b> NAKHASI ET AL.	
	<b>Examiner</b> Carolyn A. Paden	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,8,9,11-13,15-17,20-25,27,29,37,40,41,43,44 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,8,9,11-13,15-17,20-25,27,29,37,40,41,43,44 and 46-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                     |                                                                   |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 18, 2010 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-9, 11-13, 15-17, 20-25, 27, 29, 37, 40-41, 43-44 and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoyama (6,827,963) in view of Wester (6,589,688), CFR and StOnge taken together as further evidenced by Baileys for reasons of record.

Aoyama discloses fats and oils for reducing lipids in the blood. The patent discloses the preparation of triglycerides from tricaprylin and oleic acid in the case of example 1 and triolein and caprylic in example 3. The synthesized triglycerides were treated to remove free fatty acids to provide

triglyceride compositions shown in tables 1 and 4. The examples all use directed interesterification to prepare the triglycerides but at column 8, lines 18-23 the use of random or chemical interesterification is suggested. The synthesized triglycerides were used in test diets to show the healthful benefits of reduction of lipids in the blood. The claims appear to differ from Aoyama in the recitation of the use of the specific triglycerides and oils of claim 1. The specific way that the synthesized triglyceride is made is a process limitation, carrying no weight in the product claim. Further, it would have been obvious to combine the triglycerides from the examples 1-3 to modify the triglyceride assortment in the diet. The claims also appear to differ from Aoyama in the inclusion of a phytosterol component. Wester is relied upon to show that incorporation of phytosterol esters in foods acts to lower the cholesterol of the body (column 1, lines 13-37). The concept of using phytosterol in cooking oils is specifically outlined in Wester at column 5, lines 35-37. CFR is relied upon to show the levels of phytosterol ester fortification required to make labeling claims with regard to lowering cholesterol and reducing the risk of coronary heart disease at page 147(G)(!) & (2). Finally St-Onge teaches that oils rich in phytosterols and medium chain triglyceride oil are known in the art to improve plasma lipid

profiles in man. With the references of Wester, CFR and St-Onge before him, it would have been obvious to one of ordinary skill in the art to fortify the oil of Aoyama with phytosterol esters to enhance the health benefits of the oil. It is appreciated that the viscosity of the structured lipid is not mentioned but triglycerides are known in the art to have a viscosity within the range of the claims and Baileys in Figure 3.1 on page 180 is relied on for support of this assertion. Also the smoke point is not mentioned but Baileys provides evidence that the smoke point of vegetable oil is around 450F. The smoke point is said to decrease with increasing free fatty acid content and Baileys at pages 211-212 is cited for support of this assertion. Aoyama treats his oils to reduce the free fatty acid content of his triglyceride. One of ordinary skill in the art would expect the smoke point of Aoyama to fall within the range of the claims. Finally Baileys is relied upon in Table 3.11 at pages 194-195 to show the melting point of oleic acid and C8-C10 separately in triglyceride form. Both triolein and tricaprylin have a melting point of within the range of the claims. One of ordinary skill in the art would expect the interesterified mixture of fats in Aoyama to also have this melting point. It is appreciated that the storage stability and taste of the oil is not mentioned but one of ordinary skill in the art would have expected

the triglyceride of Aoyama to have good storage stability and taste because of the saturated fatty acid content of the triglyceride. One would not expect the oil of Aoyama to readily oxidize. To administer a particular amount of oil or the other would have been an obvious way to modify the caloric content of the diet.

Applicant has amended to the claims to indicate that the fat portion of the composition is prepared by a randomization reaction. Applicant defines randomization at page 4, paragraph 7 with cited patents to describe chemical interesterification of fatty acid moieties to create a triglyceride.. Aoyama contemplates this mode of interesterification at column 8, lines 19-23. Applicant argues that Aoyama does not use randomization to prepare his triglyceride. This has been considered but is not persuasive for the reasons discussed above. Applicant argues that Aoyama uses an artificial combination of fatty acids but applicant's fatty acid combination is also artificial. Applicant argues that Aoyama teaches away from using a randomization reaction in his product. Aoyama contemplates random interesterification at column 8, lines 19-23.

Applicant argues that Wester, CFR and St Onge and Baileys to not contribute to the rejection because they are not directed to random

interesterification. This has been considered but is not persuasive because Aoyama provides this teaching. Applicant argues that St Onge is related to a medium chain triglyceride that has not undergone any interesterification at all. St Onge does not describe how he obtained his MCT oil but Aoyama contemplates even natural sources of MCT at column 8, lines 19-23.

Applicant argues that his composition provided better test results for LDL reduction. No unobvious difference is seen between the good test results of applicant and the test results of St Onge.

This is a Continued Examination of applicant's earlier Application No. 10795843. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the

THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is



available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794